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REMARKS

The above Amendments and these Remarks are submitted under 35 U.S.C. § 132 and 37 C.F.R. § 1.111 in response to the Office Action mailed September 20, 2007.

Examiner's Action and Applicant's Response

The Examiner rejected Claims 1-2, 4-6, and 8 as being obvious under 35 U.S. C. § 103 based on Rao (U.S. Patent No. 5,793,410) in view of Link, et al. (U.S. Patent No. 6,289,514, "Link"). Applicant respectfully traverses the rejections. Applicant had amended Claims 1 and 5 herein to further define the invention. Claims 41 and 42 have been added to further define the invention. After entry of this amendment, Claims 1, 2, 4-6, 8, 41, and 42 will be pending.

Response to the Rejection of Claims 1, 2, 4-6, and 8 under 35 U.S.C. § 103(a)

The Examiner rejected Claims 1-2, 4-6, and 8 as being obvious under 35 U.S. C. § 103 based on Rao in view of Link. The Examiner stated that Rao teaches all the elements of Claim 1, except for the step of receiving the channel number tuned and the last channel number tuned from each receiver of the plurality of receivers. The Examiner stated that Link "teaches communicating events such as channel changes to the headend", so when "a channel change event occurs, the current channel and the last channel tuned to along with the time the switch was made is communicated in a message to the headend" (citing Col. 9, lines 53-62, Col. 10, lines 30-35, Col. 6, lines 1-16). The Examiner concluded that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Rao's invention to include the current and last channel tuned limitation taught by Link, "for the advantage of capturing consumer behavior for third party use, and also verifying actual delivery of content". Applicant respectfully disagrees.

The Examiner stated that Rao teaches the step of: if at least one channel of said plurality of channels is not tuned by any one of said plurality of receivers, halting transmission of a program on said at least one channel and broadcasting **information other than a program** on said at least one channel- col. 14, lines 21-35." (Emphasis added). Rao is directed to "[t]he delivery of digital video services to the home represents one important aspect of the much publicized 'information highway'. These services include HDTV, video-on-demand (VOD), near-video-on-demand (NVOD) providing staggered program starting times, interactive video services (IVS), and **other digital variants of conventional broadcast services.**" (Col. 1, lines 8-15). (Emphasis added). Applicant

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respectfully submits that Rao teaches that channels for a NVOD which do not have any subscriber tuned to them could instead be used to provide additional services which are **"other digital variants of conventional broadcast services"**. Rao states that "[f]or example, if a particular user did not want to watch any of the movies on the NVOD service, he/she could be offered some **other service (e.g., interactive home shopping or VOD or even a program from another broadcast/ NVOD service)** on one of the NVOD channels not currently being viewed by anybody." (Col. 14, lines 21-33). (Emphasis added). Thus, Applicant respectfully submits that Rao teaches that the "some other service" is some type of "digital variants of conventional broadcast services" including interactive video services, VOD, NVOD, broadcasting network. Applicant respectfully submits, therefore, that Rao does not teach or suggest that offering services other than conventional broadcast services and **"other digital variants"** thereof if a particular user did not want to watch any of the movies on the NVOD service.

In contrast, Applicant respectfully submits that the method in Claim 1 includes broadcasting information that is not a program, i.e., not NVOD, VOD or interactive video services (IVS), and other digital variants of conventional broadcast services, taught in Rao. Applicant has amended Claim 1 to make the above distinction more clear. More specifically, Applicant has amended Claim 1 to change "broadcasting information other than a program on said at least one channel" to **"communicating data services, other than digital video services on said at least one channel"**, to further define the invention, while also emphasizing the distinction between the present invention and the above-described teaching in Rao. Support for the amendment is found throughout the specification, e.g., page 1, lines 21-29, page 2, lines 12-19. The present specification describes employing unused broadcast channels for downstream data transfer to provide data services to customers such as Internet access, news services, etc. (Page 1, lines 21-29, page 2, lines 12-19, page 7, lines 19-31, page 10, lines 29-31, and see FIG. 5, especially step 512).

Applicant respectfully submits that, as described above, Rao teaches offering "digital variants of conventional broadcast services", and does not teach "communicating data services, other than digital video services", as claimed in Claim 1. Applicant respectfully submits that neither Rao nor Link, singly or in any theoretical combination teach or suggest the elements in Claim 1, as amended, including at least the step: "if at least one channel of said plurality of channels is not tuned by any one of said plurality of receivers, halting transmission of a program on said at least one channel and communicating data services, other than digital video services on said at least

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one channel". Applicant respectfully submits, therefore, that Claim 1 is non-obvious based on Rao and Link. Claims 2 and 4 depend from Claim 1 and are thus respectfully submitted as being non-obvious based on Rao and Link for the reasons given above for Claim 1.

Further, the Examiner stated that it would be obvious to combine the teachings of Rao and Link for the "advantage of capturing consumer behavior for third party use, and also verifying actual delivery of content", i.e., the purpose of Link. Applicant respectfully submits that this purpose is entirely different and unrelated to a purpose of the method of Claim 1, i.e., "managing television network bandwidth". Thus, Applicant respectfully submits that there would have been no suggestion or motivation to modify Rao as suggested by the Examiner "for managing television network bandwidth", as claimed in Claim 1. Applicant respectfully submits that Claims 1, 2, and 4 are non-obvious based on Rao and Link for this additional reason.

Applicant has added Claims 41 and 42 to further define the "communicating data services, other than digital video services" element of Claim 1. Support for the new claims is found throughout the specification, see e.g., page 1, lines 21-29, page 2, lines 12-19, page 7, lines 19-31, and page 10, lines 29-31. Claims 41 and 42 depend from Claim 1 and thus are respectfully submitted as being non-obvious based on Rao and Link for the reasons as given above for Claim 1.

Claim 5 has been amended herein as in the amendment to Claim 1 and is thus respectfully submitted as being non-obvious based on Rao and Link for the reasons given above for Claim 1. Claims 6 and 8 depend from Claim 5 and are thus respectfully submitted as being non-obvious based on Rao and Link for the same reasons given above for Claim 5.

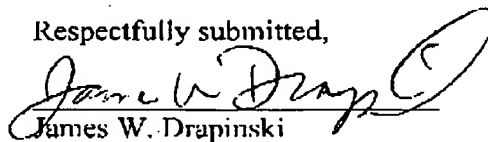
Conclusion

For the above reasons, Applicant respectfully submits that all pending claims, Claims 1, 2, 4-6, 8, 41, and 42, in the present application are allowable. Such allowance is respectfully solicited

If a telephone conference would expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (415) 984-8200.

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